IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 3457 of 2007
To
FIRST APPEAL No. 3458 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE K.M.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?**-Yes.**

2 To be referred to the Reporter or not ?**-Yes.**

3 Whether their Lordships wish to see the fair copy of the judgment ?**-No.**

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?**-No.**

5 Whether it is to be circulated to the civil judge ?**-No.**

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DEPUTY COLLECTOR & 2 - Appellant(s)
Versus
KHEMABHAI DITABHAI NINAMA - Defendant(s)

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Appearance :
MS REETA CHANDARANA, AGP for Appellant(s) : 1 - 3.
MR RN SHAH for Defendant(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE K.M.MEHTA

Date : 08/08/2007

ORAL JUDGMENT

1. Admit. Mr.R.N.Shah, learned advocate for the

claimants waives service of admission.

2. The Deputy Collector and Land Acquisition Officer, Dahod and others, appellants, original opponents have filed this appeal under Section 54 of the Land Acquisition Act, 1894 read with Section 96 of the Civil Procedure Code, 1908 against the judgment and award dated 2/5/2006 passed by the learned Principal Senior Civil Judge, Dahod in Land Acquisition Reference Case Nos.221 of 2004 to 222 of 2004. The learned Judge by impugned judgment and award partly allowed the Reference Cases with proportionate costs. The learned Judge has also held that the claimants are entitled to get actual market price of their acquired land at the rate of 28/- per sq. mtr. as additional compensation and also entitled to solatium under Section 23(1-A) and 23 of the Act with and interest on the aggregate amount of the acquired land at the rate of 9% per annum from the date of taking over the possession till one year and thereafter at the rate of 15% per annum till realization. These appeals were filed on 27/9/2006. As there was a delay in filing appeals, the applications for condonation were filed and delay

was condoned by this Court on 19/7/2007.

3. Today, on behalf of appellants, Ms.Reeta Chandarana, learned AGP appears. On behalf of respondents, Mr.R.N.Shah, learned senior counsel appears. With consent of parties, matters are taken up for final disposal.

4. The facts of the present case are as under:

4.1) In the present case, the Government was desirous to acquire land of village Raliyatabhura for the purpose of construction of Kali-2 dam and Notification under Section 4 of the Act was issued on 5/3/1998. All the procedures were completed and the Land Acquisition Officer was pleased to pass an award on 9/3/2000 and awarded Rs.5/- per sq. mtr. for non-irrigated lands and Rs.6/- per sq. mtr. for the irrigated lands.

4.2) As the claimants felt that the compensation awarded by the Land Acquisition Officer is inadequate, they filed Reference Applications before the Court of Principal Senior Civil Judge, Dahod

being Land Acquisition Reference Case Nos.221 of 2004 to 222 of 2004 and the Principal Senior Civil Judge, Dahod by the judgment and award dated 2/5/2006, awarded Rs.28/- per sq. mtr. as additional compensation as stated above.

5. Being aggrieved and dissatisfied with the said judgment and award, present appeals have been filed as indicated above.

6. The learned AGP has stated that in the present matter, the claimants have stated before the learned Judge that lands belonging to them are irrigated lands and having high fertility and they were taking various crops. The claimants have also stated that there are primary school and other existing facilities like electricity, water, road, railway station, factories etc. in their village. The actual price of lands surrounding to the acquired lands are gone very high. It was further stated that though the Land Acquisition Officer has decided the low price of the acquired lands on the basis of the sale transactions for last some years, it is the case of the applicants that the Land Acquisition

Officer has not taken into consideration all the aforesaid factors and he has committed an error in deciding the actual market price of their acquired lands. The claimants were entitled to get market value of the acquired lands but the Land Acquisition Officer has awarded the compensation at the lower rate per sq. mtr. Therefore, being aggrieved and dissatisfied with the same, the claimants have filed Reference Cases before the Reference Court with a prayer that they may be given higher compensation in this behalf. On behalf of the opponents-appellants herein, they have filed their objections and they have contended that they have considered the market value upon the date of the issuance of the notification under Section 4 of the Act and therefore, the Reference Cases are required to be rejected.

7. Before the learned Judge, Shri Khemabhai Ditabhai Ninama, who is the original applicant in Land Acquisition Reference Case No.222 of 2004 was examined at Exh.11. The applicants have also examined Mr.Om Prakashbhai Dahyabhai Pandya, who is approved Government Valuer and has assessed the

value of agriculture lands. Applicants have produced village form No.7/12 at Exh.16 and 18 and also other documentary evidence in this behalf. The applicants submitted closing pursis at Exh.19.

8. On the other hand, the opponents have tried to prove their case in their favour before the learned Judge and they have examined Bachubhai Kalubhai Bhabhor, Deputy Executive Engineer, Kali-2 Irrigation Project, Zalod Division. In his deposition, he has produced the copy of award dated 9/3/2000 in Case No.2 of 1998. The opponents have examined Jagdishchandra Harilal Trivedi, Deputy Collector & Land Acquisition Officer and also submitted closing pursis from the opponents side. Learned advocate Mr.B.C.Amin has also submitted written arguments vide Exh.29 for the applicants and learned District Government Pleader Shri P.J.Jain submitted his written arguments vide Exh.30.

9. The claimants have also relied upon the previous judgment dated 10/8/2004 passed by the learned Civil Judge (SD), Godhara in the matter of Bachudiben and others which is produced at Exh.10.

The claimants have submitted that in the said judgment, the learned Judge has awarded Rs.28/- per sq. mtr. and the said market price is very proper. It was pointed out by the learned advocate that the State of Gujarat has not filed any appeal against the said judgment and accepted the said award dated 10/8/2004. It was further stated that village which is mentioned in the above referred judgment and village of the present case are near to each other and lands in question are also near to each other and both the lands are having same fertility.

10. The learned Judge has relied upon the said judgment dated 10/8/2004 and awarded the compensation of Rs.28/- per sq. mtr. as stated above. He has also relied upon the judgment of the Hon'ble Supreme Court in the case of the Special Land Acquisition Officer and another etc. etc. vs. Sri Siddappa Omanna Tumari and others etc., reported in AIR 1995 SC 840 and also relied upon another judgment of the Hon'ble Supreme Court in the case of State of Gujarat and others vs. Rama Rana and others, reported in 1997 (3) GLR 1954. In the said case, the Hon'ble Supreme Court was pleased to observe

that in Section 23 of the Land Acquisition Act, price as revealed by sale instances with best evidence, where such evidences not available, compensation can be determined on the basis of annual produce in case of crops. 50% of the value of the crops should be treated as a cost of raising crops. Thereafter, the multiplied of 10 is considered to be fair compensation. The learned Judge has also relied upon the judgment in the case of Collector and Special Land Acquisition Officer, Kadana Dam and others vs. Vechatbhai Virasingbhai Baria, reported in 1997 (4) GCD (Gujarat), wherein the Hon'ble Court has observed that the reference court has placed reliance on the earlier award which has become final in view of the decision of this Court. He has also relied upon the judgment of this Court in First Appeal No.2490 of 1994 to 2498 of 1994 in the matter of State of Gujarat vs. Gordhanbhai Chimanbhai and others decided by the Division Bench (Coram:B.N.Kirpal, C.J. (as he was then) and A.N.Divecha, J.) dated 16/1/1996 and argued that the judgment of Senior Division Court of Godhra fixing the market price at Rs.28/- in the land of village Gultora and the said judgment of the

the Hon'ble Court is accepted by the Government. It was submitted that in this case market price of the lands in question are valued at same rate i.e. at the rate of Rs.28/- per sq. mtr. as the lands of village Gultora and others are near to village Raliyatabhura. Evidence produced from the applicants side, the learned Judge has further observed that the fertility lands of both the villages are same and therefore the award was proper. The learned Judge has also awarded solatium and interest in this behalf.

11. In the impugned judgment, the learned Judge has relied upon the previous judgment and award dated 10/8/2004 in the case of Bachudiben and others vs. Deputy Collector, Land Acquisition and Rehabilitation, Godhra and others, passed by the Senior Civil Judge, Godhra in Land Acquisition Reference Case Nos.177 of 2000 to 192 of 2000. In the said matter, the learned Judge by impugned judgment dated 10/8/2004, partly allowed the reference cases and held that all the claimants are entitled to get actual market price of acquired lands at the rate of Rs.28/- per sq. mtr. (i.e. an

additional compensation amount at the rate of Rs.2,80,000/- per hectare i.e. Rs.28/- per sq. mtr.) with additional compensation under Section 23(1-A) and solatium under section 23(2) of the Land Acquisition Act, 1984 at the rate of 30%, on the market value.

12.Now, here, the learned AGP has stated that against the said judgment dated 10/8/2004, the State of Gujarat has not filed appeal and accepted the award. In view of the same, there is no question of prolonging the present appeals before this Court and therefore, these appeals may be disposed of finally. It may be noted that in both the matters, Notification under Section 4 of the Land Acquisition Act is published on 5/3/1998. In the matter of Bachudiben and others, the lands in question are acquired for the purpose of Machhalnala Project and in the present case, the lands in question are acquired for the purpose of Kali-2 Irrigation Project. Lands acquired in both the cases are adjacent lands. In the case which is referred here, the lands in question are of village Gultora, Taluka-Zalod and in the present case, the lands in

question are of village Raliayatabhura, Taluka-Zalod.

13.The learned District Judge has relied upon the judgment and award of the District Courts, this Court as well as Hon'ble Supreme Court and after relying upon all the documentary as well as oral evidence, passed an award.

Relevancy of Previous Award:

14.This Court has relied upon the judgment of the Hon'ble Apex Court in the case of State of Madras vs. A.M.Nanjan and another, reported in (1976) 1 SCC 973, in para 7, observed as under:

14.1) “Para 7. We are unable to accept the submission that the awards in question cannot be taken as safe guides in the matter of determination are at least relevant material and may be in the nature of admission with regard to the value of the land on behalf of the State and if the land involved in the awards is comparable land in the reasonable proximity of the acquired land, the rates found in

the said documents would be a reliable material to afford a basis to work upon for determination of the compensation on a later date. The awards, therefore, cannot be dismissed as inadmissible for the purpose of determination of the compensation."

15.This Court has also relied upon the judgment of the Division Bench of this Court (Coram:S.D.Dave and S.M.Soni, JJ) in the case of Special Land Acquisition Officer, Broach vs. Punjabhai Narshibhai Patel and etc., reported in AIR 1991 Gujarat 161 , particularly in para 13 at page 165, observed as under:

15.1) "Para 13. The Ld. Trial Judge had placed reliance upon the Supreme Court decision in case of Reghuban Narain Singh v. Uttar Pradesh Government, through Collector of Bijnor, AIR 1967 SC 465. It has been laid down by the Supreme Court, in the above said case law, that the claimants can rely on the awards passed by the Competent Court in respect of similar lands under the Land Acquisition Act if the lands comprised in the said award are in the vicinity of the acquired lands and furnish a

comparable instance. As noticed above, the Awards at Exh.10,11 and 12 do provide comparable instances. The lands acquired under those cases were similar in nature to the lands acquired in the matters on hand. Moreover under two Awards the lands were acquired for the similar purpose, namely for the construction of the Southern side Approach Road to the new Narmada Bridge." .... "This is an additional circumstances which would go to show that the Ld. Trial Judge was perfectly justified in placing reliance upon the Awards at Exs.10, 11 and 12. Looking to this position, it cannot be said that the Ld. Trial Judge has erred in fixing the market price of the acquired lands in the appeals on our hand."

16. This Court has also relied upon the judgment of the Hon'ble Supreme Court in the case of **H. Narayaniah and etc. etc. v. The Land Acquisition Officer, reported in AIR 81 Karnataka 26.** In the said judgment, the Hon'ble Court has observed that the lands were acquired in two stages, as the land acquired in the second stage is adjacent to the land acquired in first stage and the award of the Land Acquisition Officer is taken into consideration for

fixing the value of land acquired in the second stage. The ratio of the aforesaid Karnataka decision is implied recognition by Section Section 28(A) of the Act which provides for re-determination of the amount on the basis of the award of the Court.

17. It may be noted that this Court is of the view that under Section 23 of the Land Acquisition Act, 1894 which provides matter to be considered in determining compensation, several methods are adopted which provides determination of market value. Admissibility of previous judgment relating to similarly situated fact or relevancy of the previous award is also one of the relevant consideration in determining the compensation under Section 23 of the Act.

18. This Court is therefore, considered these provisions and the said principle is accepted in this case after referring to the judgment of of the Hon'ble Supreme Court in the case of **State of Madras vs. A.M.Nanjan** as well as judgment of Division Bench of this Court in the case of **Special**

Land Acquisition Officer, Broach vs. Punjabhai Narshibhai Patel and etc. Therefore, this Court has considered previous judgment in this behalf.

19. The award has to be treated a valuation made by the State itself. It is in the nature of an admission on behalf of the State with regard to the value of land involved in the case. Award given by the Collectors are certainly material ad rem of ascertaining land value of comparable properties. The rates found in such award would be comparable and on hazards a reliable material to afford to work upon for determination of compensation. **Re:State of Kerala vs. Valliyamma Ponnamma, reported in AIR 85 Kerala 1, relevant page-2.**

20. In the matter of compensation, compensation awarded on the land acquired for the same public purpose under the same notification in respect of similar lands and similarly situated is relevant. Same rate of compensation is to be awarded.

21. In view of the aforesaid discussion which took place, the previous award is relevant consideration

for determination of compensation under Section 23 of the Land Acquisition Act. For that purpose, this Court has considered earlier decisions as well as the judgment of the Karnataka High Court and this court is of the view that the land acquired in the first stage is to be taken into consideration for passing the award for the land acquired in the second stage. The said decision is statutory recognition while passing the award for the land acquired in second stage. This Court has also considered the judgment in the case of State of Kerala vs. Valliyamma Ponnamma of the Kerala High Court. In view of the same, for determination of compensation, the compensation awarded by the Special Land Acquisition Officer in previous award is certainly relevant consideration.

22. Therefore, in my view, the award of the learned Reference Court is fair and proper. The learned Judge has awarded proper compensation in this behalf. Therefore, there is no merits in the present appeals and the same are required to be dismissed. Therefore, the present appeals are dismissed.

(K.M.Mehta, J.)

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